

Application No. 10/758,325
Amendment dated September 29, 2008
Reply to Office Action of May 1, 2008

- REMARKS/ARGUMENTS -

Claims 1 to 21, 23 to 26, and 29 remain in the application.

Claims 22, and 30 to 39 have been cancelled.

Claims 1 to 26, 29, 30, and 32 to 39 were rejected on the grounds of non-statutory obviousness type double patenting as being unpatentable over claims 2 to 24 of U.S. Patent No. 7,316,805 ('805).

In the Response to Arguments section at page 3 of the Office Action, the Examiner states that Applicant's arguments were not convincing because, according to the Examiner, the features preventing the pre-filled crystallization solution from contacting the undersurface of the caps or the crystallization surface on which the crystallization experiment is to be carried out were not recited.

Independent claims 1, 11, 15, 20, and 29 have been amended. All of these claims clearly recite the structural features which prevent the crystallization solution from contacting the crystallization surface during shipping and handling.

More particularly, Applicant has amended independent claim 1 to clearly set forth that the individual seals of the first level of seals extend across the wells to provide a fluid barrier between the crystallization solution contained in the wells and the crystallization surface. '805 clearly lacks any features which could prevent the crystallization solution from coming into contact with the crystallization surface 36 under the cap during shipping or handling. According to the claims of '805, the precipitating solution cannot possibly be prefilled in the wells. Otherwise, the precipitating or crystallization solution would contaminate the undersurface of the caps.

Regarding independent claims 11 and 20, Applicant has amended the claims to clearly set forth that there are two containers, the capsule containing the crystallization solution and the well, which receives the capsule. The crystallization solution is contained in the capsule and is thus prevented from contacting the crystallization surface during shipping and handling of

Application No. 10/758,325
Amendment dated September 29, 2008
Reply to Office Action of May 1, 2008

the microplate. There is clearly no suggestion whatsoever in the '805 patent to nest a shipping container, i.e. the capsule, into a crystallization container, i.e. the well. In the '805 patent, there is only one container, i.e. the well, and the crystallization solution is contained directly therein.

Turning to independent claims 15 and 29, Applicant would like to bring to the Examiner's attention the fact that the crystallization solution is sealed in the wells by a structure separate from the cap or the crystallization surface. '805's patent clearly teaches sealing the wells with the cap on which the crystallization surface is provided. This again would result in the crystallization surface being contaminated by the crystallization surface contained in the well.

In summary, all of the above amended claims clearly recite the features preventing the crystallization solution from contacting the crystallization surface during shipping and handling prior to conducting the crystallization experiments. The claims of '805's patent fail to teach any structure enabling prefilling of the microplate.

In view of the foregoing, withdrawal of the double-patenting rejection is respectfully requested.

The application is believed to be in condition for allowance, and an early action to this effect would be much appreciated.


Respectfully submitted,

Jean-Pascal VIOLA et al.

By:

September 29, 2008

Date


Sébastien CLARK, Registration No. 56651
Agent of Record
OGILVY RENAULT LLP
1981 McGill College Avenue, #1600
Montreal, Quebec, Canada H3A 2Y3
Tel.: (514) 847-4259